

1 MICHAEL A. JACOBS (CA SBN 111664)
MJacobs@mofo.com
2 ARTURO J. GONZÁLEZ (CA SBN 121490)
AGonzalez@mofo.com
3 MORRISON & FOERSTER LLP
425 Market Street
4 San Francisco, California 94105-2482
Tel : 415 268 7000/Fax: 415 268 7522

KAREN L. DUNN (Admitted *Pro Hac Vice*)
kdunn@bsfllp.com
HAMISH P.M. HUME (Admitted *Pro Hac Vice*)
hhume@bsfllp.com
BOIES SCHILLER FLEXNER LLP
1401 New York Avenue, N.W.
Washington, D.C. 20005
Tel : 202 237 2727/Fax: 202 237 6131

10 WILLIAM C. CARMODY (Admitted *Pro Hac Vice*)
bcarmody@SusmanGodfrey.com
11 SHAWN J. RABIN (Admitted *Pro Hac Vice*)
srabin@SusmanGodfrey.com
12 SUSMAN GODFREY LLP
13 1301 Avenue of the Americas, 32nd Floor
New York, New York 10019
Tel: 212.336.8330/Fax: 212.336.8340

14
15 *Counsel for Defendants*
UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC.

Plaintiff,

V.

**UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING LLC**

Defendants.

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER
TECHNOLOGIES, INC.'S AND
OTTOMOTTO LLC'S MOTION TO
EXCLUDE ONE OF THREE
OPINIONS PROFFERED BY
WAYMO EXPERT JIM TIMMINS**

Judge: Hon. William H. Alsup
Trial Date: October 10, 2017

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 By this motion, Defendants Uber Technologies, Inc. and Ottomotto LLC (collectively,
2 “Uber”) seek to exclude one of the three opinions offered in the Expert Report of Jim Timmins.
3 Goodman Decl., Ex. 1 (Excerpts of August 24, 2017 Opening Expert Report of Jim Timmins, ¶¶
4 21-22, 66-69, App. A). Timmins is not an attorney, and does not purport to have any experience
5 with the law of trusts. Yet, he (improperly) opines that [REDACTED]

6 [REDACTED].
7 This is a legal conclusion, and it is well-settled that an “expert witness cannot give an opinion as
8 to her *legal conclusion*, i.e., an opinion on an ultimate issue of law.” *Mukhtar v. California State*
9 *Univ., Hayward*, 319 F.3d 1073, 1066 n.10 (9th Cir. 2003) (emphasis in original) *overruled on*
10 *other grounds by Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457 (9th Cir. 2014). Even if
11 this opinion *were* permissible expert testimony (which it is not) it still should be excluded because
12 Timmins is not qualified to render it.

13 **BACKGROUND**

14 In his Expert Report, Timmins states that he was “retained to provide an opinion” on, *inter*
15 *alia*, [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]. The
19 following constitutes the entirety of Timmins’ analysis on the issue:

20 “[REDACTED]”
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 [REDACTED] Mr. Timmins concludes that:
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 **ARGUMENT**

24 **I. The Opinion at Issue Constitutes Impermissible Legal Conclusions.**

25 The Ninth Circuit has made clear that “expert testimony is not proper for issues of law.”
26 *Crow Tribe of Indians v. Racicot*, 87 F.3d 1039, 1045 (9th Cir. 1996). An “expert witness cannot
27 give an opinion as to her *legal conclusion*, i.e., an opinion on an ultimate issue of law.” *Mukhtar*,
28 319 F.3d at 1066 n.10 (emphasis in original); *see also Aguilar v. Int'l Longshoremen's Union*

1 *Local No. 10*, 966 F.2d 443, 447 (9th Cir. 1992) (“matters of law” are “for the court’s
2 determination” and are “inappropriate subjects for expert testimony”); *Pokorny v. Quixtar Inc.*,
3 2007 WL 1932922 at *2 (N.D. Cal. June 29, 2007) (“The prohibition against experts offering
4 legal conclusions is clear[.]”) (citations omitted).

5 Yet expert testimony regarding legal conclusions is precisely what Timmins offers. For
6 example, he opines on:

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 There can be no dispute that such conclusions are legal in nature and inappropriate subject of
17 expert testimony. See, e.g., *In re Downey Reg'l Med. Ctr.-Hosp., Inc.*, 441 B.R. 120, 129 (9th
18 Cir. 2010) (proposed expert testimony was inappropriate because it involved interpretation of
19 contract); *McHugh v. United Serv. Auto. Ass'n*, 164 F.3d 451, 454 (9th Cir.1999) (expert
20 testimony “cannot be used to provide legal meaning or interpret” contracts).

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] For this reason alone,
7 Timmins' opinion should be excluded.

8 **II. Timmins is Not Qualified to Offer the Contested Opinion**

9 An expert may testify only to matters about which "the witness is qualified as an expert by
10 knowledge, skill, experience, training, or education." Fed. R. Evid. 702. Timmins' entire opinion
11 is premised on the notion that [REDACTED]
12 [REDACTED]. But Timmins does not even purport to have knowledge, skill, experience,
13 training, or education about [REDACTED] He is not even an
14 attorney. For example, his "General Qualifications" state that he has experience with:

15 business damages, business valuation, management, director, and
16 partner compensation and equity incentives, fairness, fiduciary
17 duty, intellectual property valuation, legal malpractice, lost profits,
18 reasonable royalty, transfer pricing, investment banking practice
and analysis of merger and acquisition (M&A) transactions, venture
capital and private equity practice and analysis of investment
transactions, and similar matters.
19

20 Ex. 1 at App. A. [REDACTED]

21 [REDACTED]
22 [REDACTED] Thus, even if the opinion at issue were
23 appropriately offered by an expert (which it is not), it certainly is not appropriately offered by *this*
24 expert.

25 **CONCLUSION**

26 For the above reasons, Uber respectfully requests that the Court exclude the above-described
27 opinion of Jim Timmins as inappropriate and unreliable under the Federal Rules of Evidence and
28 *Daubert*.

1 Dated: September 16, 2017

MORRISON & FOERSTER LLP
BOIES SCHILLER FLEXNER LLP

2 By: /s/ Karen L. Dunn
3 Karen L. Dunn

4 *Counsel for Defendants*
5 UBER TECHNOLOGIES, INC. AND
OTTOMOTTO LLC

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28